

DEPO OF AL CARDOZA
TUESDAY, MAY 31, 2005

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COMMONWEALTH OF MASSACHUSETTS
WORCESTER, ss. SUPERIOR COURT DEPARTMENT
C.A. NO. 2005-00387-A

-----x
TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE,
Plaintiff

vs

MILTON CAT f/k/a
SOUTHWORTH-MILTON, INC.

Defendant

-----x
- and -
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-11836-RCL

-----x
TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE,

Plaintiff

vs

CATERPILLAR, INC.,

Defendant

-----x

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EXHIBIT

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Exhibit K

1 A. He may have asked a question about it, but in
2 relationship to the 3176, the similarities are
3 very, very close to the C12.

4 Q. You told him that the 3176 was similar to the
5 C12?

6 A. Yes.

7 Q. The 3176 and the C12 are a similar engine?

8 MR. GRUNERT: I object to the form.

9 A. Very similar.

10 Q. Is the C12 a revision of the 3176?

11 A. Yes.

12 Q. Do you remember anything more about the
13 conversation with Mr. Lynd regarding the
14 serviceability issues?

15 A. Not that I know of.

16 Q. Did you call him or did he call you, or was it
17 in person?

18 A. It was probably a one-on-one conversation.

19 Q. Do you remember where that was?

20 A. Over at Trans-Spec's facility.

21 Q. What were you doing over at tran speck's
22 facility?

23 A. Andy may have had a question on a given spec or
24 something that he's requested and either I

1 happened to be going by, or stopped over.

2 Q. I may have asked you this, but do you remember
3 when this meeting took place?

4 A. No, I do not.

5 Q. But he had a question about spec regarding the
6 C12?

7 A. Curiosity factor on his behalf.

8 Q. This was around the time that Trans-Spec was
9 purchasing the new trucks?

10 A. I would presume so.

11 Q. Did you have a laptop computer with you at the
12 time that you met with Mr. Lynd?

13 A. More than likely, yes.

14 Q. Did you use that laptop in your conversation
15 with Mr. Lynd?

16 A. I may have.

17 Q. What may have you used the laptop to do with
18 Mr. Lynd during this conversation?

19 A. Be more specific.

20 Q. Well, what did you use the laptop for? You're
21 in a meeting with Mr. Lynd and you had your
22 laptop with you. What did you use it for?

23 A. Unless he wants to program a truck or discuss
24 programming of his customer parameters, there

1 would be no reason for me to use it, unless he
2 brought up a question regarding what is known as
3 Caterpillar E T, electronic technician.

4 Q. During this meeting with Mr. Lynd, did you input
5 various permutations of conditions into the
6 laptop to show Mr. Lynd various capabilities of
7 the C12 or any other Caterpillar engines?

8 A. No.

9 Q. So you went over there around the time that
10 Trans-Spec was looking to purchase the trucks,
11 and you talked to Mr. Lynd about the C12 being
12 similar to the 3176 arcs and you think about
13 some of the specifications of the C12?

14 A. We didn't go into specifications, to my
15 knowledge.

16 Q. And you were never present when Mr. Calderbank
17 gave or showed anyone at Trans-Spec any
18 information regarding the C12 capabilities or
19 comparing it with competitive engines?

20 A. I don't believe so.

21 Q. No such conversation ever took place at the 99
22 restaurant?

23 A. I don't believe so.

24 Q. What is Caterpillar extended service coverage?

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EXHIBIT

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Exhibit H

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- 1 A. Basically, was instructed that it's not a
2 Caterpillar problem, and to so notify the
3 dealers and our customer.
4 Q. And that was in the conversation with
5 Mr. Guidotti?
6 A. Correct.
7 Q. Did he elaborate? Was there anything else that
8 he said during that conversation, or was it a
9 30-second phone call in which he gave you this
10 information?
11 A. They basically thought it was or felt that it
12 was an OEM engineering problem.
13 Q. Whose problem, specifically, did they think it
14 was?
15 A. Sterling.
16 Q. They told you this, or who told you this? Was
17 it Mr. Guidotti, or were they both on the
18 phone?
19 A. Both on the phone.
20 Q. So you called Mr. Guidotti, and then they
21 patched --
22 A. The two of them were talking together in the
23 vehicle, speakerphone.
24 Q. Oh, okay.

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- 1 So they informed you that that was a
2 Sterling problem, and that Caterpillar was not
3 going to warrant the flywheel housing and the
4 flywheel housing bolt failures?
5 A. That's correct.
6 Q. What did you say?
7 A. I was not happy with the answer, and asked, Give
8 me more specifics, which they could not do.
9 Because I was compelled to notify my dealers
10 that they were no longer going to be paying for
11 the warranty claims, any further warranty
12 claims, and that I also had to notify my
13 customer.
14 Q. Who at the dealers did you contact?
15 A. Minuteman, Tri-State.
16 Q. At Minuteman, is that --
17 A. Bill Witcher.
18 Q. At Tri-State?
19 A. Tri-State could be Kevin Holmes. It could have
20 been -- I forget who was on the service desk at
21 the time. There was somebody else on there.
22 Q. It could have been the service manager or
23 someone?
24 A. Whoever the service manager was at the time.

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- 1 Q. Did you tell anyone at Southworth about this?
2 A. Southworth was also, our service department, was
3 also notified of such.
4 Q. Who at the service department at Southworth
5 would you have told?
6 A. Primarily, the service manager, general service
7 manager, Ken Faulkner, F A U L K N E R.
8 Q. Any other dealers or individuals that you told?
9 A. I contacted Mr. Howard.
10 Q. What did you say to Mr. Howard?
11 A. That Caterpillar is no longer going to be
12 involved in warranty claims regarding the
13 flywheel housings, and that it is a structural
14 issue with the vehicle.
15 Q. What did Mr. Howard say?
16 A. Of course, he was not happy.
17 Q. Was this in person, or did you call him?
18 A. I happened to, the quickest way possible, to
19 notify him, and that was via phone.
20 Q. I know that there were other meetings involving
21 Mr. Guidotti and other people, and we'll get to
22 those.
23 But in around this time period, late
24 2002, did you have any other conversations with

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- 1 Mr. Guidotti or Mr. Smith regarding the decision
2 to stop warranting Trans-Spec's engines?
3 A. For my own peace of mind in getting to the root
4 cause of the problem, I would frequently ask if
5 they found any new information, discussing it on
6 an at least a once-a-month basis, minimum, and
7 obviously talking with Jay Howard.
8 Q. So about once a month, you would bring it up
9 with the Caterpillar people in Connecticut?
10 A. Course of conversation, obviously. They're my
11 customer, and I'm concerned for the product
12 itself. You know, we don't sell the engines.
13 We don't sell the trucks. But they're a very
14 good Cat customer to us, and we don't want to
15 see them hurt.
16 Q. What did Mr. Guidotti and Mr. Smith say every
17 time that you brought it up with them?
18 MR. GRUNERT: I object to the form.
19 A. You've got to be specific here.
20 Q. Well, once a month, you said that you raised it,
21 and you didn't say specifically what you, or
22 what the conversations that you would have with
23 Mr. Guidotti or Mr. Smith. But after this
24 initial discussion with them as to their denial

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1 of warranty coverage, you said that you
2 continually raised it at least once a month.
3 And what I'm asking you is, what would
4 their response be when you would say, Any change
5 on this situation?
6 **A. Engineering is looking into it, that type of**
7 **comment back to me.**
8 Q. Did you speak to anyone above Mr. Guidotti or
9 Mr. Smith, at this point?
10 **A. No.**
11 Q. Have you personally inspected Trans-Spec's
12 engines? And when I say "engines," I mean the
13 ones at issue in this lawsuit.
14 **A. Yes.**
15 Q. How many times?
16 **A. Well, I've been at their facility at least a**
17 **half a dozen times.**
18 Q. So you inspected the engines at Trans-Spec
19 around a half a dozen times.
20 How many times would you say that you've
21 inspected the engines at Tri-State?
22 **A. Equally.**
23 Q. How about Minuteman?
24 **A. Equally.**

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1 Q. So around a half a dozen times at each of
2 those?
3 **A. Each.**
4 Q. How many times at Southworth-Milton?
5 **A. I'd probably say a half a dozen times.**
6 Q. Around two dozen times in all, give or take?
7 **A. Yes. I'm intimate with the problem.**
8 Q. When was your first inspection of one of these
9 engines that's at issue in this lawsuit?
10 **A. November of 2002.**
11 Q. Where did this inspection take place?
12 **A. At Minuteman.**
13 Q. Who called you to inspect the engine?
14 **A. Probably, Bill Witcher.**
15 Q. Was this after Caterpillar had denied warranty
16 coverage on these?
17 **A. No, before.**
18 Q. This was before?
19 **A. Yes.**
20 Q. What did Mr. Witcher tell you?
21 **A. I said 2002.**
22 Q. The first time to inspect the engine?
23 **A. Yeah. I'm pretty sure it was November of 2002,**
24 **so that the conversation that I had with**

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1 **Mr. Guidotti and Mr. Smith was September of**
2 **2003.**
3 Q. Could the meeting at Minuteman with Mr. Witcher
4 when he called you down have been in 2001?
5 **A. No. He received delivery of the trucks in**
6 **January of 2001.**
7 Q. No, of 2000.
8 **A. Of 2000?**
9 Q. He received delivery in 2000.
10 **A. 2000, so 2001, yeah, 2001, probably, November.**
11 Q. So the denial of warranty coverage was in the
12 fall of 2002, and this conversation with Mr.
13 Witcher of Minuteman was in November of 2001, is
14 that correct?
15 **A. That's correct.**
16 Q. What happened at this inspection in November of
17 2001 at Minuteman?
18 **A. Well, this is a first incident. As I recollect,**
19 **the flywheel housing bolts were loose. There**
20 **was no unusual damage other than the fact that**
21 **the bolts had either backed out, possibly had**
22 **broken one, but nothing that was, or would send**
23 **off signals that we have a major problem.**
24 Q. What came of that meeting?

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1 **A. It was to remove the housing and inspect and**
2 **replace any parts that were worn, reassemble it**
3 **and make sure that the bolt torques were**
4 **accurate.**
5 Q. How many more inspections of Trans-Spec engines
6 did you perform between this first inspection in
7 November of 2001 and the denial of warranty
8 coverage in August or September of 2002?
9 **A. I believe seven vehicles.**
10 Q. Where did you perform those inspections, to the
11 best that you remember?
12 **A. I want to say they all took place at Minuteman.**
13 Q. Was the result the same every time?
14 **A. Some worse than others.**
15 Q. Was it always the same repair that was
16 performed, or were there other techniques or
17 ideas that were tried?
18 **A. As I recollect, the first two were basically**
19 **just, you know, inspect parts, refasten, make**
20 **sure that the bolt torques were accurate. I**
21 **believe the third one came in with housing**
22 **damage beyond what I thought was satisfactory to**
23 **repair and replace the housing. That's when**
24 **kind of the third time is the charm.**

31 (Pages 118 to 121)